

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CIVIL DOCKET NO. 5:06CV13-V**

<b>CECIL AUBREY STONE, JR., and wife</b>	)	
<b>JANET M. HUDSON,</b>	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b><u>O R D E R</u></b>
	)	
<b>WAYNE HOMES MID-ATLANTIC, LLC,</b>	)	
<b>CENTEX INTERNATIONAL, INC., and</b>	)	
<b>NORBORD, INC.,</b>	)	
<b>Defendants.</b>	)	
	)	

**THIS MATTER** is before the Court on a “Renewed Motion To Dismiss” filed on behalf of Defendant Centex International, Inc. (“Centex”). For the reasons stated herein, Defendant’s motion is now moot.

In response to Plaintiffs’ original Complaint, Defendant moved for dismissal pursuant to Rules 12(b)(2) and (b)(6) of the Federal Rules of Civil Procedure. (Document #4) Alternatively, Defendant Centex requested that Plaintiffs be directed to file a more definite statement pursuant to Rule 12(e). (Id.) Centex requested that Plaintiffs be required to specifically allege the facts upon which Plaintiffs intended to rely for purposes of exercising *in personam* jurisdiction over Centex. (Id.) Defendant’s original motion to dismiss was denied without prejudice because Centex did not support its motion with an accompanying memorandum of law. (Document #9) Defendant immediately renewed its motion. (Documents #10, #11) Plaintiffs responded in opposition and contemporaneously requested permission to amend the Complaint. (Document #17) The Court granted Plaintiffs’ motion. (Document #22)

After obtaining leave of the Court, Plaintiffs filed an Amended Complaint on May 16, 2006. (Document #26) On June 9, 2006, Defendant Centex, along with Defendants Wayne Homes Mid-Atlantic, LLC, filed an Answer to Plaintiffs' Amended Complaint. (Document #27) Defendant Centex never withdrew its earlier motion. However, by answering the allegations within the Amended Complaint, Centex has effectively waived the right to assert the Rule 12(b) defenses it originally asserted.

**IT IS, THEREFORE, ORDERED** that Centex International's Renewed Motion To Dismiss (Document #10) is hereby **DENIED as moot**.

Signed: March 20, 2007



Richard L. Voorhees  
United States District Judge

